

## SEPARATION AGREEMENT

This Separation Agreement ("Agreement") is made and entered into on the Effective Date by and between Jamie Riley ("Riley") and The Board of Trustees of The University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of its member campus, The University of Alabama (collectively "the University").

### RECITALS

Riley and the University wish to part ways and, in so doing, wish to compromise, settle, and forever resolve all potential claims, complaints, disputes, and/or causes of actions related to, connected with, or arising from Riley's employment with the University (collectively "the Claim"). Both parties deny any wrongdoing associated with their employment relationship.

NOW THEREFORE, in consideration of the mutual benefits to be received by the Parties and the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

### **PAYMENTS/RESIGNATION TERMS**

1. The University agrees to provide Riley with a neutral reference. The University further agrees to make payment to Riley as noted below after his execution of this Agreement.

- a. Riley will receive one-fourth of his annual salary (approximately \$43,750.00) divided into (4) monthly payments made on or before the last day of each month, with the final payment occurring on or before December 31, 2019. Each payment will be subject to applicable withholdings.
- b. The Fonteneau Firm LLC will receive a check for \$3,800.00 for attorneys' fees and expenses.
- c. On January 31, 2020, Riley will receive a check for \$175,000.00, less applicable withholdings.
- d. On January 31, 2020, Riley will also receive a check for \$127,450 that will result in a 1099 being issued to him no later than January 30, 2021.

2. Riley agrees to resign from his employment with the University of Alabama effective September 4, 2019. This Agreement represents, in part, the University's acceptance of Riley's tendered resignation. Further, Riley agrees never again to apply for or accept any other job or employment opportunity offered or posted within the University of Alabama System (Birmingham/Huntsville/Tuscaloosa). If the University or any Released Entity mistakenly hires Riley, then the University or any Released Entity shall have the absolute right to terminate Riley's employment after it has been discovered he has been hired.

After his resignation, Riley will receive no further compensation, of any kind tied to his employment with the University other than the payments outlined in this agreement. The sole exception to the foregoing statement is that Riley will be paid accrued annual leave in a manner

consistent with University policy.

#### **RELEASE OF THE UNIVERSITY**

3. In consideration for the promises and benefits set forth herein, Riley, for himself and his heirs, executors, administrators, successors and assigns, agrees to and hereby acquits, remises, releases, and forever discharges and covenants not to sue or bring any administrative action for monetary damages against the University or any of the University's current, future, or former trustees, officers, employees, agents, servants, insurers, predecessors, subsidiaries, assigns, successors, contractors, affiliated entities, attorneys, or any other entities ("Released Entities") with respect to any and all claims, causes of action, or demands, known or unknown, that he may now have concerning, relating to, or arising from the Claim or his employment with the University of Alabama, or any other claims whatsoever that may hereafter arise or accrue that relate in any manner to or arise from the Claim or Riley's employment with the University of Alabama up to his Resignation Date, including, without limitation, any alleged violation of Title VI and VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Equal Pay Act, 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, the Family and Medical Leave Act, the Alabama Age Discrimination Act, and any other federal or state law, constitutional provision, regulation, or ordinance and/or any public policy, contract or tort law or institutional policy having any bearing whatsoever on Riley's employment with the University of Alabama. To the extent that Riley has filed a grievance, complaint, charge, proceeding, notice, or any other document concerning any matter that is related to the Claim or to his employment at the University of Alabama or that this Agreement is intended to fully and finally resolve, he agrees to give immediate notice to the appropriate authorities that the matter has been resolved and that all such matters be permanently dismissed with prejudice.

#### **DISPARAGING COMMENTS OR PARTICIPATION IN PROCEEDINGS**

4. Riley further agrees that he will not directly or indirectly make, communicate, post, or otherwise publish any disparaging, degrading, critical, or otherwise negative remark, comment, opinion, or statement regarding any of the Released Entities, unless compelled to do so by a court of competent jurisdiction. The University's President and any other administrator who has been involved in the settlement of the Claim, agree not to make any statement or take any action that would adversely impact Riley, unless compelled to do so by Riley's conduct, conduct by others on behalf of Riley, or a court of competent jurisdiction or other administrative agency. Neither party waives the right to enforce the terms and conditions of this Agreement. Failure to fully comply with the terms of this paragraph constitutes a material breach of this Agreement.

#### **CONFIDENTIALITY**

5. In consideration of the benefits and promises referenced herein, the Parties, hereby agree that the terms of this Agreement, any discussions or communications relating thereto, as well as any discussions or communications relating to the Claim are *strictly confidential*, and shall not be discussed, referred to, or communicated by either Party or their lawyers to any other person or

entity, or in any way publicized, disclosed, distributed, discussed or disseminated by the parties, either by name or anonymously, by any media format of any kind, including, without limitation, text messages, e-mail, Internet postings, postings on social networks such as Facebook, or Twitter, or fictional accounts based upon the contents or subject matter of the proposed litigation, unless expressly required by law, written court order, or subpoena to do so. Neither Party shall take any action to cause any portion of the Agreement to be separately or individually disclosed, such that a person may determine, by combining disclosed information with other disclosed information or with public records, that the System may have provided anything of value in settlement.

6. The confidentiality provisions of this Agreement shall not, however, apply to (1) prevent the University from complying with any requirements under the Open Records Act of Alabama, or other applicable law; (2) University personnel who were not directly involved in these negotiations; or (3) prevent either Party from advising a government agency as required by law, their attorneys and/or tax return preparers of the settlement of the Claim, provided those legal and financial advisors agree in advance to not further disclose the terms of this Agreement.

7. It is expressly agreed, acknowledged, and understood that any disclosure in violation of this Agreement would be a material breach of the Parties' obligations under this Agreement.

8. The Parties, their attorneys, and financial advisors agree that if or when they are asked about the Agreement or the Claim, they will respond that this matter has been resolved to the satisfaction of Riley and the University.

9. If any Party is served with a subpoena for the production of this Agreement and/or non-public information exchanged during the Claim, the Party so served shall promptly notify the other Parties and afford them an opportunity to object to its production or otherwise intervene.

#### **BREACH OF AGREEMENT TERMS**

10. Should any Party to this Agreement be found by a court of competent jurisdiction to have breached this Agreement, the non-breaching Party shall be entitled to any and all court and litigation costs, including reasonable attorney's fees, incurred in enforcing this Agreement or bringing a lawsuit for breach of this Agreement or defending a lawsuit arising out of this Agreement. Should Riley breach the terms of the Agreement before distribution of all funds noted herein, he forfeits the right to receive any undistributed funds.

#### **THIRD PARTY BENEFICIARIES**

11. The Parties agree and recognize that the Released Entities are intended, third-party beneficiaries of this Agreement, and they shall have the right to take any legal and equitable action to enforce the terms of this Agreement.

#### **NO ADMISSION OF LIABILITY**

12. Riley and the University agree that in entering into this Agreement, neither Riley nor any of the Released Entities acknowledge any liability whatsoever, including, but not limited to, liability for wrongful conduct, discrimination, harassment, hostile environment, retaliation, violation of due process, or violation of any federal, state, local or institutional law, regulation, or policy. Neither this Agreement nor any actions taken in furtherance of this Agreement shall constitute or be deemed or construed as an admission by the Released Entities of liability, wrongdoing, or of the viability of the allegations relating to or arising from the Claim or Riley's employment. This Agreement and any negotiations in connection therewith shall not be introduced into evidence in any court, arbitration, or other proceeding for any purpose other than in connection with disputes regarding the implementation, interpretation, and/or enforcement of this Agreement. Each party is responsible for its and his own legal fees, costs, and expenses.

#### **TAX AND RETIREMENT OBLIGATIONS**

13. It is understood and agreed among the Parties that the **\$175,000** paid to Riley is in the nature of lost wages and that regular withholdings are being made from that amount. It is understood and agreed among the Parties that the **\$127,450** paid to Riley as compensatory damages are solely for the release of any potential claims he may have against the University, and none of that amount represents wages, compensation, or other employee benefits. Riley assumes all responsibility and obligation for reporting and paying any required taxes due on the **\$127,450** and will indemnify the University and hold the University harmless from liability for any taxes, interest, and/or penalties that may be assessed or asserted on the monies paid by the University to Riley under the terms of this Agreement. The University will report this information to the Internal Revenue Service, the Alabama Department of Revenue, and other appropriate tax authorities as required by law. Riley agrees to keep the University informed of his last known address(es) to enable the University to mail the appropriate forms.

14. Likewise, Riley and the University agree that the University has not made and does not make any representation as to Riley's status within any retirement system or as to the treatment of matters in this agreement for calculation or determination of creditable service, earnable compensation, or retirement allowances or for any other purpose by any retirement system or program, including the Teachers' Retirement System of Alabama. It is understood that the University has no responsibility in the determination of Riley's retirement status as regards the calculation or determination of creditable service, earnable compensation, or retirement allowances or for any other purposes by all retirement programs or systems and that the University has not, cannot and will not make any representations to him regarding his status with such retirement program or system or regarding the treatment of matters in this document for calculation or determination of creditable service, earnable compensation, or retirement allowances or for any other purposes by such programs or system or the impact or lack of any impact of this agreement or any of its terms upon such retirement program or system. Riley explicitly understands that any decisions any retirement system makes in calculating his creditable service or any other retirement-related factor will not, and is not intended to, impact the terms and conditions of this agreement. Likewise, nothing herein shall be interpreted or construed as modifying or diminishing any retirement benefits to which Riley may otherwise be entitled. Riley and the University agree that it is entirely Riley's responsibility to determine his status with all retirement programs.

## **REPRESENTATIONS AND WARRANTIES**

15. Each of the Parties makes the following express representations and warranties to the other:

- a. That the person executing this Agreement has the right power, legal capacity, and is fully authorized to do so;
- b. That there are no pending conditions, agreements, transactions, or negotiations that would render this Agreement or any part thereof, void, avoidable, or unenforceable;
- c. That the Agreement is enforceable against each of the Parties in accordance with its terms;
- d. That he/it enters into this Agreement voluntarily, on an arm's length basis, and in reliance upon his/its own independent investigation and analysis, which includes receiving independent legal advice;
- e. That he/it has read this Agreement, that he/it has had an opportunity to discuss it with legal counsel, and that he/it fully understands all of the terms herein;
- f. That he/it executes this Agreement voluntarily, absent pressure or undue influence from any person or entity;
- g. That no representations have been made by any of the Parties that have been relied upon by the other respective Parties in relation to the subject matter of this Agreement, nor the negotiation of this Agreement; and
- h. That each of the Parties warrants and guarantees that she/it has not made any assignment of any claim, cause of action or right of any kind embodied in any of the claims or obligations that are released in this Agreement.

## **SUCCESSORS AND ASSIGNS**

16. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their current and former respective trustees, agents, employees, representatives, officers, directors, subsidiaries, affiliates, assigns, heirs, and successors in interest.

## **INTEGRATION AND WAIVER**

17. This Agreement shall constitute the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes any and all prior or contemporaneous understandings or agreements. No supplement, modification, waiver, or termination hereof shall be binding or enforceable unless executed in writing by the Parties to be bound thereby.

## **CHOICE OF FORUM/CHOICE OF LAW**

18. Alabama law, without regard to any conflict of law provisions, shall exclusively apply to the Agreement and any disputes between the parties relating to or arising from this Agreement. The University does not waive and specifically reserves all immunities to which it is entitled by the constitution, laws, and statutes of the United States and the State of Alabama. Any provisions of the Agreement that may be considered a consent to suit or a waiver of immunity by

the University is hereby stricken and rendered null and void. Exclusive jurisdiction and venue of any claims that are not barred by immunity, nor required to be filed before the State Board of Adjustment, shall lie in the United States District Court for the Northern District of Alabama, Western Division (Tuscaloosa), or the Circuit Court of Tuscaloosa County, Alabama.

#### **INTERPRETATION**

19. The language of this Agreement is the result of negotiation between the Parties hereto, and any ambiguities in said language shall not be presumptively construed against or in favor of any Party hereto.

#### **SEVERABILITY**

20. In the event that any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction as to any Party, the validity, legality, and enforceability of other provisions in or obligations under this Agreement shall not in any way be affected or impaired thereby.

#### **COUNTERPARTS**

21. This Agreement may be signed and exchanged in counterpart by facsimile and this Agreement as so signed and exchanged will constitute the full, binding Agreement of the Parties.

#### **CAPTIONS**

22. The captions and headings in this Agreement are for convenience of reference only and in no way define, limit, or describe the scope or intent of any provision or sections of this Agreement.

#### **EFFECTIVE DATE**

23. The Effective Date of this Agreement is the last date of execution set forth below.

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Having read and fully considered and understood this Agreement; and having the right to consult with legal counsel regarding its terms, I have voluntarily elected, as evidenced by my signature below, to agree to be bound by the terms of this Agreement.

**DR. JAMIE RILEY**



09/04/2019

Date

**THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA**

By: 



Print Name



Title



Date